

**S. G. Construction, Inc. and G. & C. Construction, Inc. and Connecticut Laborers' Fund a/w Laborers' International Union of North America, AFL-CIO. Case 34-CA-5664**

October 12, 1995

**SECOND SUPPLEMENTAL DECISION AND ORDER**

BY CHAIRMAN GOULD AND MEMBERS COHEN  
AND TRUESDALE

On August 26, 1992, and September 20, 1993, the National Labor Relations Board issued Decisions and Orders,<sup>1</sup> inter alia, ordering S. G. Construction, Inc. (Respondent SG), its officers, agents, successors, and assigns, to make whole certain of its unit employees for loss of earnings and other benefits resulting from the Respondent SG's failure, since about October 27, 1991, to continue in full force and effect all the terms and conditions of its collective-bargaining agreements with the Union, and to pay a total of \$40,557.90, plus interest, to the Connecticut Laborers' Health Fund, Connecticut Laborers' Pension Fund, Connecticut Laborers' Annuity Fund, Connecticut Laborers' Legal Services Fund, and the New England Laborers' Training Fund. The United States Court of Appeals for the Second Circuit enforced the Board's Orders on January 26, 1993, and March 1, 1994, respectively.

A controversy having arisen over the liability for making the above-noted fund payments, as well as further amounts of fund payments due as of April 30, 1993, under the terms of the Board's enforced Orders, on July 19, 1995, the Regional Director for Region 34 issued a second amended compliance specification (compliance specification) alleging, inter alia, that the obligations of Respondent SG and G. & C. Construction, Inc. (Respondent G & C) with regard to fringe benefit fund contributions owed through April 30, 1993, would be satisfied pursuant to the Board's enforced Orders by the payments set forth in the compliance specification, and notifying the Respondents that they should file timely answers complying with the Board's Rules and Regulations. Although properly served with a copy of the compliance specification,<sup>2</sup> neither Respondent filed an answer.

By letter dated August 16, 1995, the General Counsel advised the Respondents that no answer to the

compliance specification had been received and that unless an appropriate answer were filed by August 25, 1995, summary judgment would be sought. Neither Respondent filed an answer.

On September 5, 1995, the General Counsel filed with the Board a Motion for Summary Judgment and for Issuance of Second Supplemental Decision and Order, with exhibits attached. On September 8, 1995, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondents again filed no response. The allegations in the motion and in the compliance specification are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on the Motion for Summary Judgment**

Section 102.56(a) of the Board's Rules and Regulations provides that the Respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(c) of the Board's Rules and Regulations states:

If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

According to the uncontroverted allegations of the Motion for Summary Judgment, the Respondents, despite having been advised of the filing requirements, have failed to file an answer to the compliance specification. In the absence of good cause for their failure to file an answer, we deem the allegations in the compliance specification to be admitted as true, and grant the General Counsel's Motion for Summary Judgment. Accordingly, we conclude that the Respondents are obligated to pay the fringe benefit fund contributions set forth in the second amended compliance specification, and we will order payment by the Respondents of those amounts, plus interest accrued on those amounts to the date of payment.

**FINDINGS OF FACT**

About April 30, 1993, Respondent SG ceased operations. At all material times since April 22, 1993, Respondent G & C, a Connecticut corporation with an office and place of business at Respondent SG's former facility in Watertown, Connecticut, has been engaged as a contractor in the building and construction industry. During the 1994 calendar year, Respondent G & C, in conducting its business operation, performed services valued in excess of \$50,000 for Fusco Cor-

<sup>1</sup> 308 NLRB No. 56 and 312 NLRB No. 58.

<sup>2</sup> The copy of the compliance specification served by certified mail on Respondent S.G. at its last known business address was returned by the United States Postal Service with the unexplained notation, "MCWF." However, a respondent's failure to provide for service of documents cannot defeat the purposes of the Act. *Maislin Transport*, 274 NLRB 529 (1985). Further, a copy of the compliance specification was sent by regular mail to Salvatore Guerra, the president of Respondent SG. This letter was not returned, thereby indicating actual receipt. *Lite Flight, Inc.*, 285 NLRB 649, 650 (1987).

poration, an enterprise directly engaged in interstate commerce. At all material time Respondent G & C has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent G & C within the meaning of Section 2(11) of the Act and agents of Respondent G & C within the meaning of Section 2(13) of the Act:

Nunzio Parietario	President and Director
Sal Guerrara	Sales Manager and General Manager
Edward Coventry	Vice President
T. A. Jillson	Office Manager

At all material times, Respondents SG and G & C have engaged in the same business enterprise with common officers, management and supervision; have formulated and administered a common labor policy; have shared common premises, facilities and equipment; have provided services for the same customers; have interchanged personnel with each other; and have held themselves out to the public as a single-integrated business enterprise. Based on these operations, Respondent SG and G & C constitute a single-integrated business enterprise and a single employer within the meaning of the Act and are jointly and severally liable for all the required fund payments pursuant to the Board's Orders, as enforced by the court of appeals.

Alternatively, before engaging in the conduct described above, Respondent G & C was on notice of Respondent SG's potential liability in Case 34-CA-5664, and based on the above-described conduct and operations, Respondent G & C has continued the employing entity with knowledge of Respondent SG's potential liability to remedy its unfair labor practices, and is a successor to Respondent SG.

#### ORDER

The National Labor Relations Board orders that Respondent S. G. Construction, Inc. and Respondent G. & C. Construction, Inc., Watertown, Connecticut, their officers, agents, successors, and assigns, shall pay the amounts set forth below to the respective funds, plus interest accrued on those amounts to the date of payment:<sup>3</sup>

Connecticut Laborers' Health Fund	\$20,768.50
Connecticut Laborers' Pension Fund	11,532.70
Connecticut Laborers' Annuity Fund	11,189.25
Connecticut Laborers' Legal Services Fund	691.28
New England Laborers' Training Fund	1,211.38
<i>Total</i>	<b>\$45,393.11</b>

<sup>3</sup> The following amounts are for the period October 27, 1991, to April 30, 1993.